

## **REMARKS**

Claims 1-11 are currently pending in this application, with Claims 1, 8 and 11 being independent claims.

Please amend Claims 1-4, 6, 8 and 10 as set forth herein. Please add new Claims 12-14. No new matter has been added.

Claims 1-11 are rejected under 35 U.S.C. 103(a) as being 35 U.S.C. 103(a) as being unpatentable over Edwards et al. (U.S. Patent 7,461,164) in view of Baiocchi et al. (IP QoS Delivery in a Broadband Wireless Local Loop: MAC Protocol Definition and Performance Evaluation, IEEE Journal on Selected Areas in Communication, Vol. 18, No. 9, September 2000).

Regarding the rejection of independent Claims 1, 8 and 11 under §103(a), the Examiner alleges that the combination of Edwards and Baiocchi renders the claims unpatentable.

Each of Claims 1, 8 and 11 recite, in one form or another, a terminal that provides first priorities to classified data packets and provides second priorities to PDUs. For example, in Claim 1, the terminal includes a first module that corresponds to a MAC software unit and provides first priorities to the classified data packets and a second module that corresponds to a MAC hardware unit and provides second priorities for PDUs.

With respect to Claim 1, this claim recites two priority controllers, a first priority controller that gives first priorities to classified data packets according to the QoS policy, and a second priority controller for determining second priorities of PDUs according to characteristics of the data packets. Thus, in Claim 1, the terminal sets two different priorities; one based on a QoS policy for data packets and one based on characteristics of the data packets for PDUs. The PDUs are constructed from the data packets. The Examiner alleges that Edwards teaches these

features. In col. 9, lines 8-40, Edwards teaches a hardware-based MAC component and a software-based MAC component. Both the hardware-based MAC component and the software-based MAC component operate on packets; no operations on PDUs is disclosed. Although Baiocchi teaches generating PDUs, the combination would only produce a system that continues to operate Edwards' hardware-based and software-based MAC components on packets.

With respect to Claim 8, this claim recites providing first and second priorities. The first priorities are provided to data packets classified according to a QoS policy. The second priorities are provided data packets sequentially output according to the first priorities; the second priorities are not a QoS policy priority. The Examiner alleges that Edwards teaches these features. Again, Edwards teaches a hardware-based MAC component and a software-based MAC component. Edwards does not specifically teach or disclose that second priorities are provided data packets sequentially output according to the first priorities. Baiocchi does not cure the defects of Edwards.

With respect to Claim 11, this claim recites that packets are classified and stored based on a QoS policy; it is then determined whether to admit or discard the packets, then, only the admitted packets are provided a priority. The Examiner alleges, "'classifying' and 'determining admission or discard of the classified data packets' must inherently be present in Edwards (although not explicitly mentioned)." Inherency can only be used for matters that are undisputed. See, e.g. MPEP §2112. Edwards could be a system that admits all packets all the time or could be a system that discards all packets all the time; thus "determining admission or discard of the classified data packets" is not inherent in Edwards.

Based on at least the foregoing, withdrawal of the rejections of Claims 1, 8 and 11 under §103(a) is respectfully requested.

Independent Claims 1, 8 and 11 are believed to be in condition for allowance. While not conceding the patentability of the dependent claims, per se, dependent Claims 2-7, 9 and 10 are

also believed to be patentable and allowable for at least the same reasons as set forth above for independent Claims 2-7, 9 and 10.

Accordingly, all of the claims pending in the Application, namely, Claims 1-11 are believed to be in condition for allowance. Should the Examiner believe that a telephone conference or personal interview would facilitate resolution of any remaining matters, the Examiner may contact Applicants' attorney at the number given below.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul J. Farrell", written in a cursive style.

Paul J. Farrell  
Reg. No. 33,494  
Attorney for Applicants

**THE FARRELL LAW FIRM, LLP**  
290 Broadhollow Road, Suite 210E  
Melville, New York 11747  
Tel: (516) 228-3565  
Fax: (516) 228-8475